

AN ACT concerning financial regulation.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Illinois Bank Examiners' Education Foundation Act is amended by changing Sections 1, 3.01, 4, 5, and 8 and by adding Section 3.07 as follows:

(20 ILCS 3210/1) (from Ch. 17, par. 401)

Sec. 1. The Illinois Bank Examiners' Education Foundation is hereby created for the purpose of providing a means through which funds may be raised, invested and disbursed for continuing education and professional training activity for the examination employees of the Division of Banking whose responsibilities include the supervision and regulation of commercial banks, foreign banking offices, trust companies, and their information technology service providers ~~Commissioner's office.~~

(Source: P.A. 84-1127.)

(20 ILCS 3210/3.01) (from Ch. 17, par. 403.1)

Sec. 3.01. "Board" means the State Banking Board of Illinois ~~Board of Trustees of the Illinois Bank Examiners' Education Foundation~~ created by the Illinois Banking Act ~~this Act.~~

(Source: P.A. 84-1127.)

(20 ILCS 3210/3.07 new)

Sec. 3.07. Division of Banking. "Division of Banking" means the Division of Banking of the Department of Financial and Professional Regulation.

(20 ILCS 3210/4) (from Ch. 17, par. 404)

Sec. 4. The Foundation shall establish an endowment fund with the monies in the Illinois Bank Examiners' Education Fund. The income from such Fund shall be used to pay for continuing education and professional training activity for the examination employees of the Division of Banking whose responsibilities include the supervision and regulation of commercial banks, foreign banking offices, trust companies, and their information technology service providers ~~Commissioner's office authorized by the Board of the Illinois Bank Examiners' Education Program~~ and to pay for reasonable expenses incurred by the Board in the course of its official duties. The continuing education and professional training activity to be funded by the Foundation shall be a supplement to the education and training expenditures regularly being made from the Bank & Trust Company Fund for such purposes.

(Source: P.A. 84-1127.)

(20 ILCS 3210/5) (from Ch. 17, par. 405)

Sec. 5. The Foundation shall be governed by the State Banking Board of Illinois ~~a Board of Trustees. The Board shall consist of the following trustees: the Commissioner, who shall be its chairman; one Class A member and three Class B members from the State Banking Board of Illinois, appointed by the Governor.~~

~~The terms of the trustees of the Foundation who are members of the State Banking Board of Illinois are to be coextensive with their terms on the State Banking Board of Illinois. An appointment to fill a vacancy shall be for the unexpired term of the trustee whose term is being filled. Trustees shall receive no compensation for service on the Board, but shall be reimbursed for all reasonable and necessary expenditures incurred in the performance of their official duties.~~

(Source: P.A. 84-1127.)

(20 ILCS 3210/8) (from Ch. 17, par. 408)

Sec. 8. No ~~Neither the Commissioner nor any~~ member of the Board shall be subject to any civil liability or penalty, whether for damages or otherwise, on account of or for any action taken or omitted to be taken in their respective official capacities, except when such acts or omissions to act are corrupt or malicious or unless such action is taken or omitted to be taken not in good faith and without reasonable grounds.

(Source: P.A. 84-1127.)

Section 10. The Illinois Banking Act is amended by changing Sections 2, 48, 78, 79, 80, and 82 as follows:

(205 ILCS 5/2) (from Ch. 17, par. 302)

Sec. 2. General definitions. In this Act, unless the context otherwise requires, the following words and phrases shall have the following meanings:

"Accommodation party" shall have the meaning ascribed to that term in Section 3-419 of the Uniform Commercial Code.

"Action" in the sense of a judicial proceeding includes recoupments, counterclaims, set-off, and any other proceeding in which rights are determined.

"Affiliate facility" of a bank means a main banking premises or branch of another commonly owned bank. The main banking premises or any branch of a bank may be an "affiliate facility" with respect to one or more other commonly owned banks.

"Appropriate federal banking agency" means the Federal Deposit Insurance Corporation, the Federal Reserve Bank of Chicago, or the Federal Reserve Bank of St. Louis, as determined by federal law.

"Bank" means any person doing a banking business whether subject to the laws of this or any other jurisdiction.

A "banking house", "branch", "branch bank" or "branch office" shall mean any place of business of a bank at which

deposits are received, checks paid, or loans made, but shall not include any place at which only records thereof are made, posted, or kept. A place of business at which deposits are received, checks paid, or loans made shall not be deemed to be a branch, branch bank, or branch office if the place of business is adjacent to and connected with the main banking premises, or if it is separated from the main banking premises by not more than an alley; provided always that (i) if the place of business is separated by an alley from the main banking premises there is a connection between the two by public or private way or by subterranean or overhead passage, and (ii) if the place of business is in a building not wholly occupied by the bank, the place of business shall not be within any office or room in which any other business or service of any kind or nature other than the business of the bank is conducted or carried on. A place of business at which deposits are received, checks paid, or loans made shall not be deemed to be a branch, branch bank, or branch office (i) of any bank if the place is a terminal established and maintained in accordance with paragraph (17) of Section 5 of this Act, or (ii) of a commonly owned bank by virtue of transactions conducted at that place on behalf of the other commonly owned bank under paragraph (23) of Section 5 of this Act if the place is an affiliate facility with respect to the other bank.

"Branch of an out-of-state bank" means a branch established or maintained in Illinois by an out-of-state bank as a result

of a merger between an Illinois bank and the out-of-state bank that occurs on or after May 31, 1997, or any branch established by the out-of-state bank following the merger.

"Bylaws" means the bylaws of a bank that are adopted by the bank's board of directors or shareholders for the regulation and management of the bank's affairs. If the bank operates as a limited liability company, however, "bylaws" means the operating agreement of the bank.

"Call report fee" means the fee to be paid to the Commissioner by each State bank pursuant to paragraph (a) of subsection (3) of Section 48 of this Act.

"Capital" includes the aggregate of outstanding capital stock and preferred stock.

"Cash flow reserve account" means the account within the books and records of the Commissioner of Banks and Real Estate used to record funds designated to maintain a reasonable Bank and Trust Company Fund operating balance to meet agency obligations on a timely basis.

"Charter" includes the original charter and all amendments thereto and articles of merger or consolidation.

"Commissioner" means the Commissioner of Banks and Real Estate, except that beginning on April 6, 2009 (the effective date of Public Act 95-1047) ~~this amendatory Act of the 95th General Assembly~~, all references in this Act to the Commissioner of Banks and Real Estate are deemed, in appropriate contexts, to be references to the Secretary of

Financial and Professional Regulation.

"Commonly owned banks" means 2 or more banks that each qualify as a bank subsidiary of the same bank holding company pursuant to Section 18 of the Federal Deposit Insurance Act; "commonly owned bank" refers to one of a group of commonly owned banks but only with respect to one or more of the other banks in the same group.

"Community" means a city, village, or incorporated town and also includes the area served by the banking offices of a bank, but need not be limited or expanded to conform to the geographic boundaries of units of local government.

"Company" means a corporation, limited liability company, partnership, business trust, association, or similar organization and, unless specifically excluded, includes a "State bank" and a "bank".

"Consolidating bank" means a party to a consolidation.

"Consolidation" takes place when 2 or more banks, or a trust company and a bank, are extinguished and by the same process a new bank is created, taking over the assets and assuming the liabilities of the banks or trust company passing out of existence.

"Continuing bank" means a merging bank, the charter of which becomes the charter of the resulting bank.

"Converting bank" means a State bank converting to become a national bank, or a national bank converting to become a State bank.

"Converting trust company" means a trust company converting to become a State bank.

"Court" means a court of competent jurisdiction.

"Director" means a member of the board of directors of a bank. In the case of a manager-managed limited liability company, however, "director" means a manager of the bank and, in the case of a member-managed limited liability company, "director" means a member of the bank. The term "director" does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a member of the board of directors.

"Director of Banking" means the Director of the Division of Banking of the Department of Financial and Professional Regulation.

"Eligible depository institution" means an insured savings association that is in default, an insured savings association that is in danger of default, a State or national bank that is in default or a State or national bank that is in danger of default, as those terms are defined in this Section, or a new bank as that term defined in Section 11(m) of the Federal Deposit Insurance Act or a bridge bank as that term is defined in Section 11(n) of the Federal Deposit Insurance Act or a new federal savings association authorized under Section 11(d) (2) (f) of the Federal Deposit Insurance Act.

"Fiduciary" means trustee, agent, executor, administrator,



committee, guardian for a minor or for a person under legal disability, receiver, trustee in bankruptcy, assignee for creditors, or any holder of similar position of trust.

"Financial institution" means a bank, savings bank, savings and loan association, credit union, or any licensee under the Consumer Installment Loan Act or the Sales Finance Agency Act and, for purposes of Section 48.3, any proprietary network, funds transfer corporation, or other entity providing electronic funds transfer services, or any corporate fiduciary, its subsidiaries, affiliates, parent company, or contractual service provider that is examined by the Commissioner. For purposes of Section 5c and subsection (b) of Section 13 of this Act, "financial institution" includes any proprietary network, funds transfer corporation, or other entity providing electronic funds transfer services, and any corporate fiduciary.

"Foundation" means the Illinois Bank Examiners' Education Foundation.

"General obligation" means a bond, note, debenture, security, or other instrument evidencing an obligation of the government entity that is the issuer that is supported by the full available resources of the issuer, the principal and interest of which is payable in whole or in part by taxation.

"Guarantee" means an undertaking or promise to answer for payment of another's debt or performance of another's duty, liability, or obligation whether "payment guaranteed" or

"collection guaranteed".

"In danger of default" means a State or national bank, a federally chartered insured savings association or an Illinois state chartered insured savings association with respect to which the Commissioner or the appropriate federal banking agency has advised the Federal Deposit Insurance Corporation that:

(1) in the opinion of the Commissioner or the appropriate federal banking agency,

(A) the State or national bank or insured savings association is not likely to be able to meet the demands of the State or national bank's or savings association's obligations in the normal course of business; and

(B) there is no reasonable prospect that the State or national bank or insured savings association will be able to meet those demands or pay those obligations without federal assistance; or

(2) in the opinion of the Commissioner or the appropriate federal banking agency,

(A) the State or national bank or insured savings association has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(B) there is no reasonable prospect that the capital of the State or national bank or insured

savings association will be replenished without federal assistance.

"In default" means, with respect to a State or national bank or an insured savings association, any adjudication or other official determination by any court of competent jurisdiction, the Commissioner, the appropriate federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a State or national bank or an insured savings association.

"Insured savings association" means any federal savings association chartered under Section 5 of the federal Home Owners' Loan Act and any State savings association chartered under the Illinois Savings and Loan Act of 1985 or a predecessor Illinois statute, the deposits of which are insured by the Federal Deposit Insurance Corporation. The term also includes a savings bank organized or operating under the Savings Bank Act.

"Insured savings association in recovery" means an insured savings association that is not an eligible depository institution and that does not meet the minimum capital requirements applicable with respect to the insured savings association.

"Issuer" means for purposes of Section 33 every person who shall have issued or proposed to issue any security; except that (1) with respect to certificates of deposit, voting trust certificates, collateral-trust certificates, and certificates

of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust, agreement, or instrument under which the securities are issued; (2) with respect to trusts other than those specified in clause (1) above, where the trustee is a corporation authorized to accept and execute trusts, "issuer" means the entrusters, depositors, or creators of the trust and any manager or committee charged with the general direction of the affairs of the trust pursuant to the provisions of the agreement or instrument creating the trust; and (3) with respect to equipment trust certificates or like securities, "issuer" means the person to whom the equipment or property is or is to be leased or conditionally sold.

"Letter of credit" and "customer" shall have the meanings ascribed to those terms in Section 5-102 of the Uniform Commercial Code.

"Main banking premises" means the location that is designated in a bank's charter as its main office.

"Maker or obligor" means for purposes of Section 33 the issuer of a security, the promisor in a debenture or other debt security, or the mortgagor or grantor of a trust deed or similar conveyance of a security interest in real or personal property.

"Merged bank" means a merging bank that is not the

continuing, resulting, or surviving bank in a consolidation or merger.

"Merger" includes consolidation.

"Merging bank" means a party to a bank merger.

"Merging trust company" means a trust company party to a merger with a State bank.

"Mid-tier bank holding company" means a corporation that (a) owns 100% of the issued and outstanding shares of each class of stock of a State bank, (b) has no other subsidiaries, and (c) 100% of the issued and outstanding shares of the corporation are owned by a parent bank holding company.

"Municipality" means any municipality, political subdivision, school district, taxing district, or agency.

"National bank" means a national banking association located in this State and after May 31, 1997, means a national banking association without regard to its location.

"Out-of-state bank" means a bank chartered under the laws of a state other than Illinois, a territory of the United States, or the District of Columbia.

"Parent bank holding company" means a corporation that is a bank holding company as that term is defined in the Illinois Bank Holding Company Act of 1957 and owns 100% of the issued and outstanding shares of a mid-tier bank holding company.

"Person" means an individual, corporation, limited liability company, partnership, joint venture, trust, estate, or unincorporated association.

"Public agency" means the State of Illinois, the various counties, townships, cities, towns, villages, school districts, educational service regions, special road districts, public water supply districts, fire protection districts, drainage districts, levee districts, sewer districts, housing authorities, the Illinois Bank Examiners' Education Foundation, the Chicago Park District, and all other political corporations or subdivisions of the State of Illinois, whether now or hereafter created, whether herein specifically mentioned or not, and shall also include any other state or any political corporation or subdivision of another state.

"Public funds" or "public money" means current operating funds, special funds, interest and sinking funds, and funds of any kind or character belonging to, in the custody of, or subject to the control or regulation of the United States or a public agency. "Public funds" or "public money" shall include funds held by any of the officers, agents, or employees of the United States or of a public agency in the course of their official duties and, with respect to public money of the United States, shall include Postal Savings funds.

"Published" means, unless the context requires otherwise, the publishing of the notice or instrument referred to in some newspaper of general circulation in the community in which the bank is located at least once each week for 3 successive weeks. Publishing shall be accomplished by, and at the expense of, the

bank required to publish. Where publishing is required, the bank shall submit to the Commissioner that evidence of the publication as the Commissioner shall deem appropriate.

"Qualified financial contract" means any security contract, commodity contract, forward contract, including spot and forward foreign exchange contracts, repurchase agreement, swap agreement, and any similar agreement, any option to enter into any such agreement, including any combination of the foregoing, and any master agreement for such agreements. A master agreement, together with all supplements thereto, shall be treated as one qualified financial contract. The contract, option, agreement, or combination of contracts, options, or agreements shall be reflected upon the books, accounts, or records of the bank, or a party to the contract shall provide documentary evidence of such agreement.

"Recorded" means the filing or recording of the notice or instrument referred to in the office of the Recorder of the county wherein the bank is located.

"Resulting bank" means the bank resulting from a merger or conversion.

"Secretary" means the Secretary of Financial and Professional Regulation, or a person authorized by the Secretary or by this Act to act in the Secretary's stead.

"Securities" means stocks, bonds, debentures, notes, or other similar obligations.

"Stand-by letter of credit" means a letter of credit under

which drafts are payable upon the condition the customer has defaulted in performance of a duty, liability, or obligation.

"State bank" means any banking corporation that has a banking charter issued by the Commissioner under this Act.

"State Banking Board" means the State Banking Board of Illinois.

"Subsidiary" with respect to a specified company means a company that is controlled by the specified company. For purposes of paragraphs (8) and (12) of Section 5 of this Act, "control" means the exercise of operational or managerial control of a corporation by the bank, either alone or together with other affiliates of the bank.

"Surplus" means the aggregate of (i) amounts paid in excess of the par value of capital stock and preferred stock; (ii) amounts contributed other than for capital stock and preferred stock and allocated to the surplus account; and (iii) amounts transferred from undivided profits.

"Tier 1 Capital" and "Tier 2 Capital" have the meanings assigned to those terms in regulations promulgated for the appropriate federal banking agency of a state bank, as those regulations are now or hereafter amended.

"Trust company" means a limited liability company or corporation incorporated in this State for the purpose of accepting and executing trusts.

"Undivided profits" means undistributed earnings less discretionary transfers to surplus.



"Unimpaired capital and unimpaired surplus", for the purposes of paragraph (21) of Section 5 and Sections 32, 33, 34, 35.1, 35.2, and 47 of this Act means the sum of the state bank's Tier 1 Capital and Tier 2 Capital plus such other shareholder equity as may be included by regulation of the Commissioner. Unimpaired capital and unimpaired surplus shall be calculated on the basis of the date of the last quarterly call report filed with the Commissioner preceding the date of the transaction for which the calculation is made, provided that: (i) when a material event occurs after the date of the last quarterly call report filed with the Commissioner that reduces or increases the bank's unimpaired capital and unimpaired surplus by 10% or more, then the unimpaired capital and unimpaired surplus shall be calculated from the date of the material event for a transaction conducted after the date of the material event; and (ii) if the Commissioner determines for safety and soundness reasons that a state bank should calculate unimpaired capital and unimpaired surplus more frequently than provided by this paragraph, the Commissioner may by written notice direct the bank to calculate unimpaired capital and unimpaired surplus at a more frequent interval. In the case of a state bank newly chartered under Section 13 or a state bank resulting from a merger, consolidation, or conversion under Sections 21 through 26 for which no preceding quarterly call report has been filed with the Commissioner, unimpaired capital and unimpaired surplus shall be calculated for the first

calendar quarter on the basis of the effective date of the charter, merger, consolidation, or conversion.

(Source: P.A. 95-924, eff. 8-26-08; 95-1047, eff. 4-6-09; revised 4-14-09.)

(205 ILCS 5/48) (from Ch. 17, par. 359)

Sec. 48. Secretary's powers; duties. The Secretary shall have the powers and authority, and is charged with the duties and responsibilities designated in this Act, and a State bank shall not be subject to any other visitorial power other than as authorized by this Act, except those vested in the courts, or upon prior consultation with the Secretary, a foreign bank regulator with an appropriate supervisory interest in the parent or affiliate of a state bank. In the performance of the Secretary's duties:

(1) The Commissioner shall call for statements from all State banks as provided in Section 47 at least one time during each calendar quarter.

(2) (a) The Commissioner, as often as the Commissioner shall deem necessary or proper, and no less frequently than 18 months following the preceding examination, shall appoint a suitable person or persons to make an examination of the affairs of every State bank, except that for every eligible State bank, as defined by regulation, the Commissioner in lieu of the examination may accept on an alternating basis the examination made by the eligible State bank's appropriate

federal banking agency pursuant to Section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991, provided the appropriate federal banking agency has made such an examination. A person so appointed shall not be a stockholder or officer or employee of any bank which that person may be directed to examine, and shall have powers to make a thorough examination into all the affairs of the bank and in so doing to examine any of the officers or agents or employees thereof on oath and shall make a full and detailed report of the condition of the bank to the Commissioner. In making the examination the examiners shall include an examination of the affairs of all the affiliates of the bank, as defined in subsection (b) of Section 35.2 of this Act, or subsidiaries of the bank as shall be necessary to disclose fully the conditions of the subsidiaries or affiliates, the relations between the bank and the subsidiaries or affiliates and the effect of those relations upon the affairs of the bank, and in connection therewith shall have power to examine any of the officers, directors, agents, or employees of the subsidiaries or affiliates on oath. After May 31, 1997, the Commissioner may enter into cooperative agreements with state regulatory authorities of other states to provide for examination of State bank branches in those states, and the Commissioner may accept reports of examinations of State bank branches from those state regulatory authorities. These cooperative agreements may set forth the manner in which the

other state regulatory authorities may be compensated for examinations prepared for and submitted to the Commissioner.

(b) After May 31, 1997, the Commissioner is authorized to examine, as often as the Commissioner shall deem necessary or proper, branches of out-of-state banks. The Commissioner may establish and may assess fees to be paid to the Commissioner for examinations under this subsection (b). The fees shall be borne by the out-of-state bank, unless the fees are borne by the state regulatory authority that chartered the out-of-state bank, as determined by a cooperative agreement between the Commissioner and the state regulatory authority that chartered the out-of-state bank.

(2.5) Whenever any State bank, any subsidiary or affiliate of a State bank, or after May 31, 1997, any branch of an out-of-state bank causes to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises:

(a) that performance shall be subject to examination by the Commissioner to the same extent as if services were being performed by the bank or, after May 31, 1997, branch of the out-of-state bank itself on its own premises; and

(b) the bank or, after May 31, 1997, branch of the out-of-state bank shall notify the Commissioner of the existence of a service relationship. The notification shall be submitted with the first statement of condition (as required by Section 47 of this Act) due after the

making of the service contract or the performance of the service, whichever occurs first. The Commissioner shall be notified of each subsequent contract in the same manner.

For purposes of this subsection (2.5), the term "bank services" means services such as sorting and posting of checks and deposits, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a State bank, including but not limited to electronic data processing related to those bank services.

(3) The expense of administering this Act, including the expense of the examinations of State banks as provided in this Act, shall to the extent of the amounts resulting from the fees provided for in paragraphs (a), (a-2), and (b) of this subsection (3) be assessed against and borne by the State banks:

(a) Each bank shall pay to the Secretary a Call Report Fee which shall be paid in quarterly installments equal to one-fourth of the sum of the annual fixed fee of \$800, plus a variable fee based on the assets shown on the quarterly statement of condition delivered to the Secretary in accordance with Section 47 for the preceding quarter according to the following schedule: 16¢ per \$1,000 of the first \$5,000,000 of total assets, 15¢ per \$1,000 of the next \$20,000,000 of total assets, 13¢ per \$1,000 of the

next \$75,000,000 of total assets, 9¢ per \$1,000 of the next \$400,000,000 of total assets, 7¢ per \$1,000 of the next \$500,000,000 of total assets, and 5¢ per \$1,000 of all assets in excess of \$1,000,000,000, of the State bank. The Call Report Fee shall be calculated by the Secretary and billed to the banks for remittance at the time of the quarterly statements of condition provided for in Section 47. The Secretary may require payment of the fees provided in this Section by an electronic transfer of funds or an automatic debit of an account of each of the State banks. In case more than one examination of any bank is deemed by the Secretary to be necessary in any examination frequency cycle specified in subsection 2(a) of this Section, and is performed at his direction, the Secretary may assess a reasonable additional fee to recover the cost of the additional examination; provided, however, that an examination conducted at the request of the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act shall not be deemed to be an additional examination under this Section. In lieu of the method and amounts set forth in this paragraph (a) for the calculation of the Call Report Fee, the Secretary may specify by rule that the Call Report Fees provided by this Section may be assessed semiannually or some other period and may provide in the rule the formula to be used for calculating and assessing the periodic Call Report Fees to be paid by State banks.

(a-1) If in the opinion of the Commissioner an emergency exists or appears likely, the Commissioner may assign an examiner or examiners to monitor the affairs of a State bank with whatever frequency he deems appropriate, including but not limited to a daily basis. The reasonable and necessary expenses of the Commissioner during the period of the monitoring shall be borne by the subject bank. The Commissioner shall furnish the State bank a statement of time and expenses if requested to do so within 30 days of the conclusion of the monitoring period.

(a-2) On and after January 1, 1990, the reasonable and necessary expenses of the Commissioner during examination of the performance of electronic data processing services under subsection (2.5) shall be borne by the banks for which the services are provided. An amount, based upon a fee structure prescribed by the Commissioner, shall be paid by the banks or, after May 31, 1997, branches of out-of-state banks receiving the electronic data processing services along with the Call Report Fee assessed under paragraph (a) of this subsection (3).

(a-3) After May 31, 1997, the reasonable and necessary expenses of the Commissioner during examination of the performance of electronic data processing services under subsection (2.5) at or on behalf of branches of out-of-state banks shall be borne by the out-of-state banks, unless those expenses are borne by the state

regulatory authorities that chartered the out-of-state banks, as determined by cooperative agreements between the Commissioner and the state regulatory authorities that chartered the out-of-state banks.

(b) "Fiscal year" for purposes of this Section 48 is defined as a period beginning July 1 of any year and ending June 30 of the next year. The Commissioner shall receive for each fiscal year, commencing with the fiscal year ending June 30, 1987, a contingent fee equal to the lesser of the aggregate of the fees paid by all State banks under paragraph (a) of subsection (3) for that year, or the amount, if any, whereby the aggregate of the administration expenses, as defined in paragraph (c), for that fiscal year exceeds the sum of the aggregate of the fees payable by all State banks for that year under paragraph (a) of subsection (3), plus any amounts transferred into the Bank and Trust Company Fund from the State Pensions Fund for that year, plus all other amounts collected by the Commissioner for that year under any other provision of this Act, plus the aggregate of all fees collected for that year by the Commissioner under the Corporate Fiduciary Act, excluding the receivership fees provided for in Section 5-10 of the Corporate Fiduciary Act, and the Foreign Banking Office Act. The aggregate amount of the contingent fee thus arrived at for any fiscal year shall be apportioned amongst, assessed upon, and paid by the State banks and



foreign banking corporations, respectively, in the same proportion that the fee of each under paragraph (a) of subsection (3), respectively, for that year bears to the aggregate for that year of the fees collected under paragraph (a) of subsection (3). The aggregate amount of the contingent fee, and the portion thereof to be assessed upon each State bank and foreign banking corporation, respectively, shall be determined by the Commissioner and shall be paid by each, respectively, within 120 days of the close of the period for which the contingent fee is computed and is payable, and the Commissioner shall give 20 days advance notice of the amount of the contingent fee payable by the State bank and of the date fixed by the Commissioner for payment of the fee.

(c) The "administration expenses" for any fiscal year shall mean the ordinary and contingent expenses for that year incident to making the examinations provided for by, and for otherwise administering, this Act, the Corporate Fiduciary Act, excluding the expenses paid from the Corporate Fiduciary Receivership account in the Bank and Trust Company Fund, the Foreign Banking Office Act, the Electronic Fund Transfer Act, and the Illinois Bank Examiners' Education Foundation Act, including all salaries and other compensation paid for personal services rendered for the State by officers or employees of the State, including the Commissioner and the Deputy

Commissioners, all expenditures for telephone and telegraph charges, postage and postal charges, office stationery, supplies and services, and office furniture and equipment, including typewriters and copying and duplicating machines and filing equipment, surety bond premiums, and travel expenses of those officers and employees, employees, expenditures or charges for the acquisition, enlargement or improvement of, or for the use of, any office space, building, or structure, or expenditures for the maintenance thereof or for furnishing heat, light, or power with respect thereto, all to the extent that those expenditures are directly incidental to such examinations or administration. The Commissioner shall not be required by paragraphs (c) or (d-1) of this subsection (3) to maintain in any fiscal year's budget appropriated reserves for accrued vacation and accrued sick leave that is required to be paid to employees of the Commissioner upon termination of their service with the Commissioner in an amount that is more than is reasonably anticipated to be necessary for any anticipated turnover in employees, whether due to normal attrition or due to layoffs, terminations, or resignations.

(d) The aggregate of all fees collected by the Secretary under this Act, the Corporate Fiduciary Act, or the Foreign Banking Office Act on and after July 1, 1979, shall be paid promptly after receipt of the same,

accompanied by a detailed statement thereof, into the State treasury and shall be set apart in a special fund to be known as the "Bank and Trust Company Fund", except as provided in paragraph (c) of subsection (11) of this Section. All earnings received from investments of funds in the Bank and Trust Company Fund shall be deposited in the Bank and Trust Company Fund and may be used for the same purposes as fees deposited in that Fund. The amount from time to time deposited into the Bank and Trust Company Fund shall be used: (i) to offset the ordinary administrative expenses of the Secretary as defined in this Section or (ii) as a credit against fees under paragraph (d-1) of this subsection (3). Nothing in this amendatory Act of 1979 shall prevent continuing the practice of paying expenses involving salaries, retirement, social security, and State-paid insurance premiums of State officers by appropriations from the General Revenue Fund. However, the General Revenue Fund shall be reimbursed for those payments made on and after July 1, 1979, by an annual transfer of funds from the Bank and Trust Company Fund. Moneys in the Bank and Trust Company Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.

Notwithstanding provisions in the State Finance Act,

as now or hereafter amended, or any other law to the contrary, the sum of \$18,788,847 shall be transferred from the Bank and Trust Company Fund to the Financial Institutions Settlement of 2008 Fund on the effective date of this amendatory Act of the 95th General Assembly, or as soon thereafter as practical.

Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the Governor may, during any fiscal year through January 10, 2011, from time to time direct the State Treasurer and Comptroller to transfer a specified sum not exceeding 10% of the revenues to be deposited into the Bank and Trust Company Fund during that fiscal year from that Fund to the General Revenue Fund in order to help defray the State's operating costs for the fiscal year. Notwithstanding provisions in the State Finance Act, as now or hereafter amended, or any other law to the contrary, the total sum transferred during any fiscal year through January 10, 2011, from the Bank and Trust Company Fund to the General Revenue Fund pursuant to this provision shall not exceed during any fiscal year 10% of the revenues to be deposited into the Bank and Trust Company Fund during that fiscal year. The State Treasurer and Comptroller shall transfer the amounts designated under this Section as soon as may be practicable after receiving the direction to transfer from the Governor.

(d-1) Adequate funds shall be available in the Bank and Trust Company Fund to permit the timely payment of administration expenses. In each fiscal year the total administration expenses shall be deducted from the total fees collected by the Commissioner and the remainder transferred into the Cash Flow Reserve Account, unless the balance of the Cash Flow Reserve Account prior to the transfer equals or exceeds one-fourth of the total initial appropriations from the Bank and Trust Company Fund for the subsequent year, in which case the remainder shall be credited to State banks and foreign banking corporations and applied against their fees for the subsequent year. The amount credited to each State bank and foreign banking corporation shall be in the same proportion as the Call Report Fees paid by each for the year bear to the total Call Report Fees collected for the year. If, after a transfer to the Cash Flow Reserve Account is made or if no remainder is available for transfer, the balance of the Cash Flow Reserve Account is less than one-fourth of the total initial appropriations for the subsequent year and the amount transferred is less than 5% of the total Call Report Fees for the year, additional amounts needed to make the transfer equal to 5% of the total Call Report Fees for the year shall be apportioned amongst, assessed upon, and paid by the State banks and foreign banking corporations in the same proportion that the Call Report Fees of each,

respectively, for the year bear to the total Call Report Fees collected for the year. The additional amounts assessed shall be transferred into the Cash Flow Reserve Account. For purposes of this paragraph (d-1), the calculation of the fees collected by the Commissioner shall exclude the receivership fees provided for in Section 5-10 of the Corporate Fiduciary Act.

(e) The Commissioner may upon request certify to any public record in his keeping and shall have authority to levy a reasonable charge for issuing certifications of any public record in his keeping.

(f) In addition to fees authorized elsewhere in this Act, the Commissioner may, in connection with a review, approval, or provision of a service, levy a reasonable charge to recover the cost of the review, approval, or service.

(4) Nothing contained in this Act shall be construed to limit the obligation relative to examinations and reports of any State bank, deposits in which are to any extent insured by the United States or any agency thereof, nor to limit in any way the powers of the Commissioner with reference to examinations and reports of that bank.

(5) The nature and condition of the assets in or investment of any bonus, pension, or profit sharing plan for officers or employees of every State bank or, after May 31, 1997, branch of an out-of-state bank shall be deemed to be included in the

affairs of that State bank or branch of an out-of-state bank subject to examination by the Commissioner under the provisions of subsection (2) of this Section, and if the Commissioner shall find from an examination that the condition of or operation of the investments or assets of the plan is unlawful, fraudulent, or unsafe, or that any trustee has abused his trust, the Commissioner shall, if the situation so found by the Commissioner shall not be corrected to his satisfaction within 60 days after the Commissioner has given notice to the board of directors of the State bank or out-of-state bank of his findings, report the facts to the Attorney General who shall thereupon institute proceedings against the State bank or out-of-state bank, the board of directors thereof, or the trustees under such plan as the nature of the case may require.

(6) The Commissioner shall have the power:

(a) To promulgate reasonable rules for the purpose of administering the provisions of this Act.

(a-5) To impose conditions on any approval issued by the Commissioner if he determines that the conditions are necessary or appropriate. These conditions shall be imposed in writing and shall continue in effect for the period prescribed by the Commissioner.

(b) To issue orders against any person, if the Commissioner has reasonable cause to believe that an unsafe or unsound banking practice has occurred, is occurring, or is about to occur, if any person has violated, is

violating, or is about to violate any law, rule, or written agreement with the Commissioner, or for the purpose of administering the provisions of this Act and any rule promulgated in accordance with this Act.

(b-1) To enter into agreements with a bank establishing a program to correct the condition of the bank or its practices.

(c) To appoint hearing officers to execute any of the powers granted to the Commissioner under this Section for the purpose of administering this Act and any rule promulgated in accordance with this Act and otherwise to authorize, in writing, an officer or employee of the Office of Banks and Real Estate to exercise his powers under this Act.

(d) To subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath, and to require the production of any relevant books, papers, accounts, and documents in the course of and pursuant to any investigation being conducted, or any action being taken, by the Commissioner in respect of any matter relating to the duties imposed upon, or the powers vested in, the Commissioner under the provisions of this Act or any rule promulgated in accordance with this Act.

(e) To conduct hearings.

(7) Whenever, in the opinion of the Secretary ~~Commissioner~~, any director, officer, employee, or agent of a State bank or



any subsidiary or bank holding company of the bank or, after May 31, 1997, of any branch of an out-of-state bank or any subsidiary or bank holding company of the bank shall have violated any law, rule, or order relating to that bank or any subsidiary or bank holding company of the bank, shall have obstructed or impeded any examination or investigation by the Secretary ~~Commissioner~~, shall have engaged in an unsafe or unsound practice in conducting the business of that bank or any subsidiary or bank holding company of the bank, or shall have violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent does not assure reasonable promise of safe and sound operation of the State bank, the Secretary ~~Commissioner~~ may issue an order of removal. If, in the opinion of the Secretary ~~Commissioner~~, any former director, officer, employee, or agent of a State bank or any subsidiary or bank holding company of the bank, prior to the termination of his or her service with that bank or any subsidiary or bank holding company of the bank, violated any law, rule, or order relating to that State bank or any subsidiary or bank holding company of the bank, obstructed or impeded any examination or investigation by the Secretary ~~Commissioner~~, engaged in an unsafe or unsound practice in conducting the business of that bank or any subsidiary or bank holding company of the bank, or violated any law or engaged or

participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent would not have assured reasonable promise of safe and sound operation of the State bank, the Secretary ~~Commissioner~~ may issue an order prohibiting that person from further service with a bank or any subsidiary or bank holding company of the bank as a director, officer, employee, or agent. An order issued pursuant to this subsection shall be served upon the director, officer, employee, or agent. A copy of the order shall be sent to each director of the bank affected by registered mail. ~~The person affected by the action may request a hearing before the State Banking Board within 10 days after receipt of the order. The hearing shall be held by the Board within 30 days after the request has been received by the Board. The Board shall make a determination approving, modifying, or disapproving the order of the Commissioner as its final administrative decision. If a hearing is held by the Board, the Board shall make its determination within 60 days from the conclusion of the hearing. Any person affected by a decision of the Board under this subsection (7) of Section 48 of this Act may have the decision reviewed only under and in accordance with the Administrative Review Law and the rules adopted pursuant thereto.~~ A copy of the order shall also be served upon the bank of which he is a director, officer, employee, or agent, whereupon he shall cease to be a director,

officer, employee, or agent of that bank. The Secretary ~~Commissioner~~ may institute a civil action against the director, officer, or agent of the State bank or, after May 31, 1997, of the branch of the out-of-state bank against whom any order provided for by this subsection (7) of this Section 48 has been issued, and against the State bank or, after May 31, 1997, out-of-state bank, to enforce compliance with or to enjoin any violation of the terms of the order. Any person who has been the subject of an order of removal or an order of prohibition issued by the Secretary ~~Commissioner~~ under this subsection or Section 5-6 of the Corporate Fiduciary Act may not thereafter serve as director, officer, employee, or agent of any State bank or of any branch of any out-of-state bank, or of any corporate fiduciary, as defined in Section 1-5.05 of the Corporate Fiduciary Act, or of any other entity that is subject to licensure or regulation by the Division of Banking ~~Commissioner or the Office of Banks and Real Estate~~ unless the Secretary ~~Commissioner~~ has granted prior approval in writing.

For purposes of this paragraph (7), "bank holding company" has the meaning prescribed in Section 2 of the Illinois Bank Holding Company Act of 1957.

(8) The Commissioner may impose civil penalties of up to \$10,000 against any person for each violation of any provision of this Act, any rule promulgated in accordance with this Act, any order of the Commissioner, or any other action which in the Commissioner's discretion is an unsafe or unsound banking

practice.

(9) The Commissioner may impose civil penalties of up to \$100 against any person for the first failure to comply with reporting requirements set forth in the report of examination of the bank and up to \$200 for the second and subsequent failures to comply with those reporting requirements.

(10) All final administrative decisions of the Commissioner hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law. For matters involving administrative review, venue shall be in either Sangamon County or Cook County.

(11) The endowment fund for the Illinois Bank Examiners' Education Foundation shall be administered as follows:

(a) (Blank).

(b) The Foundation is empowered to receive voluntary contributions, gifts, grants, bequests, and donations on behalf of the Illinois Bank Examiners' Education Foundation from national banks and other persons for the purpose of funding the endowment of the Illinois Bank Examiners' Education Foundation.

(c) The aggregate of all special educational fees collected by the Secretary ~~Commissioner~~ and property received by the Secretary ~~Commissioner~~ on behalf of the Illinois Bank Examiners' Education Foundation under this subsection (11) on or after June 30, 1986, shall be either

(i) promptly paid after receipt of the same, accompanied by

a detailed statement thereof, into the State Treasury and shall be set apart in a special fund to be known as "The Illinois Bank Examiners' Education Fund" to be invested by either the Treasurer of the State of Illinois in the Public Treasurers' Investment Pool or in any other investment he is authorized to make or by the Illinois State Board of Investment as the State Banking Board of Illinois ~~board of trustees of the Illinois Bank Examiners' Education Foundation~~ may direct or (ii) deposited into an account maintained in a commercial bank or corporate fiduciary in the name of the Illinois Bank Examiners' Education Foundation pursuant to the order and direction of the Board of Trustees of the Illinois Bank Examiners' Education Foundation.

(12) (Blank).

(Source: P.A. 94-91, eff. 7-1-05; 95-1047, eff. 4-6-09.)

(205 ILCS 5/78) (from Ch. 17, par. 390)

Sec. 78. Board of banks and trust companies; creation, members, appointment. There is created a Board which shall be known as the State Banking Board of Illinois which shall consist of the Director of Banking ~~Commissioner~~, who shall be its chairman, and 11 ~~16~~ additional members. The Board shall be comprised of individuals interested in the banking industry. Two members shall be from State banks having total assets of not more than \$75,000,000 at the time of their appointment; 2

members shall be from State banks having total assets of more than \$75,000,000, but not more than \$150,000,000 at the time of their appointment; 2 members shall be from State banks having total assets of more than \$150,000,000, but not more than \$500,000,000 at the time of their appointment; 2 members shall be from State banks having total assets of more than \$500,000,000, but not more than \$2,000,000,000 at the time of their appointment, and one member shall be from a State bank having total assets of more than \$2,000,000,000 at the time of his or her appointment. There shall be 2 public members, neither of whom shall be an officer or director of or owner, whether directly or indirectly, of more than 5% of the outstanding capital stock of any bank. ~~divided into 3 classes designated Class A members, Class B members, and Class C members who are appointed by the Governor by and with the advice and consent of the Senate and made up as follows:~~

~~Class A shall consist of 4 persons, none of whom shall be an officer or director of or owner, whether direct or indirect, of more than 5% of the outstanding capital stock of any bank.~~

~~Class B shall consist of 10 persons who at the time of their respective appointments shall have had not less than 10 years banking experience. Of the 10 Class B members, 2 shall be from State banks having total assets of not more than \$20,000,000 at the time of their appointment, 2 shall be from State banks having total assets of more than \$20,000,000 but not more than \$50,000,000 at the time of their appointment, 2~~

~~shall be from State banks having total assets of more than \$50,000,000, but not more than \$125,000,000 at the time of their appointment, one shall be from a State bank having total assets of more than \$125,000,000 but not more than \$250,000,000 at the time of appointment, one shall be from a State bank having total assets of more than \$250,000,000 but not more than \$1,000,000,000 at the time of appointment, one shall be from a State bank having total assets of more than \$1,000,000,000 at the time of appointment and one shall be from a foreign banking corporation certificated pursuant to the Foreign Banking Office Act.~~

~~Class C shall consist of 2 persons who shall be at-large members representing the banking industry generally.~~

(Source: P.A. 91-798, eff. 7-9-00.)

(205 ILCS 5/79) (from Ch. 17, par. 391)

Sec. 79. Board, terms of office. The terms of office of the ~~Class A and Class B members of the~~ State Banking Board of Illinois shall be 4 years, except that the initial Board appointments shall be staggered with the Governor initially appointing, with advice and consent of the Senate, 3 members to serve 2-year terms, 4 members to serve 3-year terms, and 4 members to serve 4-year terms. Members shall continue to serve on the Board until their replacement is appointed and qualified. Vacancies shall be filled by appointment by the Governor with advice and consent of the Senate. ~~Board of Banks~~

~~and Trust Companies who are in office on the effective date of this Amendatory Act of 1985 shall expire on December 31, 1985. The terms of office of Class A, Class B, and Class C members of the State Banking Board shall be as follows:~~

~~(a) The terms of office of all Class A and Class B members of the State Banking Board shall begin on January 1, 1986.~~

~~(b) The persons first appointed as the Class A members of the State Banking Board shall have the following terms as designated by the Governor; one person for a term of one year, one person for a term of 2 years, one person for a term of 3 years and one person for a term of 4 years. Thereafter, the term of office of each Class A member shall be 4 years, except that an appointment to fill a vacancy shall be for the unexpired term of the member whose term is being filled.~~

~~(c) The persons first appointed as Class B members of the State Banking Board shall have the following terms as designated by the Governor; one member for a term of one year, 3 members for a term of 2 years, 3 members for a term of 3 years, and 3 members for a term of 4 years. Thereafter, the term of office of each Class B member shall be 4 years, except that an appointment to fill a vacancy shall be for the unexpired term of the member whose term is being filled.~~

~~(c-5) The initial term of office of each Class C member of the State Banking Board appointed pursuant to this amendatory Act of the 91st General Assembly shall expire on January 1, 2004. Thereafter, the term of office of each Class C member~~



~~shall be 4 years, except that an appointment to fill a vacancy shall be for the unexpired term of the member whose term is being filled.~~

(d) ~~No Class A, Class B, or Class C~~ State Banking Board member shall serve more than 2 full 4-year terms of office.

~~(e) The term of office of a State Banking Board member shall terminate automatically when the member no longer meets the qualifications for the member's appointment to the Board provided that an increase or decrease in the asset size of the member's bank during the member's term of office on the State Banking Board shall not result in the termination of the member's term of office.~~

(Source: P.A. 90-301, eff. 8-1-97; 91-798, eff. 7-9-00.)

(205 ILCS 5/80) (from Ch. 17, par. 392)

Sec. 80. Board; powers. The Board shall have the following powers in addition to any others that may be granted to it by law:

(a) (Blank). ~~To make, alter, and amend rules and regulations proposed for adoption by the Commissioner with respect to the following matters:~~

~~(i) The scope and nature of showings to be furnished and evidence to be presented in connection with the granting of charters of new banks, and in connection with the approval by the Commissioner of mergers, conversions, consolidations and changes of location, and the forms upon~~

~~which any of such showings may be made.~~

~~(ii) The steps to be taken and the showings to be furnished in connection with voluntary dissolutions under Sections 68 to 74, inclusive, of this Act, and the forms upon which such showing are to be made.~~

~~(iii) The form, content and nature of the reports to be furnished to the Commissioner under Section 47 of this Act, and the definition of the scope of examinations and the data to be furnished in connection with examinations by the Commissioner under subsection (2) and subsection (5) of Section 48 of this Act.~~

(b) To review, consider, and make recommendations to the Director of Banking ~~Commissioner~~ upon any banking matters.

(c) (Blank). ~~To require the Commissioner to report periodically to the Board on any banking matters, including the following:~~

~~(i) Data with respect to banks whose condition or practices are being critically considered or reviewed by the Commissioner pursuant to Section 51 of this Act, and data with respect to banks to which any notice has been given by the Commissioner pursuant to said Section 51; and~~

~~(ii) The extent and nature of all disciplinary action taken by the Commissioner against any bank or any officer or director thereof, and information with respect to the manner or extent of the remedial action, if any, taken by the criticized bank or director or officer; and~~

~~(iii) The extent and nature of all action taken by the Commissioner under or pursuant to Section 52 of this Act, and~~

~~(iv) The extent and nature of all action taken by the Commissioner under or pursuant to Section 31 of this Act.~~

(d) (Blank). ~~To require the Commissioner to furnish the Board reports in respect of the granting or of the denial of new charters, mergers, changes of location, conversions or consolidations, including the findings made and the basis for the action taken by the Commissioner in connection therewith.~~

(e) To review, consider, and submit to the Director of Banking Commissioner and to the Governor proposals for amendments to this Act or for changes in or additions to the administration thereof which in the opinion of the Board are necessary or desirable in order to assure the safe and sound conduct of the banking business.

(f) To require the Secretary Commissioner to furnish the Board space for meetings to be held by the Board as well as to require the Secretary Commissioner to provide such clerical and technical assistance as the Board may require.

(g) To adopt its own by-laws with respect to Board meetings and procedures. Such by-laws shall provide that:

(i) A majority of the whole Board constitutes a quorum.

(ii) A majority of the quorum shall constitute effective action except that a vote of a majority of the whole Board shall be necessary for ~~the approval of rules~~

~~and regulations proposed for adoption by the Commissioner under Section 80(a), (i), (ii) and (iii) of this Act and shall be necessary for recommendations made to the Director of Banking Commissioner and to the Governor with regard to proposed amendments to this Act or to the administrative practices hereunder.~~

(iii) The Board shall meet at least once in each calendar year and upon the call of the Director of Banking Commissioner or a majority of the Board. The Director of Banking Commissioner or a majority of the Board may call such special or additional meetings as may be deemed necessary or desirable.

(h) (Blank). ~~To make rules to regulate the method of selecting candidates for consideration by the Governor to fill a vacancy in the Office of the Commissioner and the deputy commissioners.~~

(i) (Blank). ~~To make rules to regulate the method of selecting candidates for consideration by the Governor to fill a vacancy in the office of any of the 10 Class B members of the Board.~~

(j) (Blank). ~~To make rules to regulate the conduct of hearings under subsection (7) of Section 48 of this Act.~~

(k) (Blank). ~~To subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books, papers, accounts and documents in the course of and pursuant to~~

~~any hearing being conducted under subsection (7) of Section 48 of this Act.~~

(l) (Blank). ~~To appoint hearing officers to conduct hearings under subsection (7) of Section 48 of this Act.~~

(m) To authorize the transfer of funds from the Illinois Bank Examiners' Education Fund to the Bank and Trust Company Fund. Any amount transferred shall be retransferred to the Illinois Bank Examiners' Education Fund from the Bank and Trust Company Fund within 3 years.

(n) To maintain and direct the investments of the Illinois Bank Examiners' Education Fund.

(o) To evaluate various courses, programs, curricula, and schools of continuing education and professional training that are available from within the United States for State banking department examination personnel and develop a program known as the Illinois Bank Examiners' Education Program. The Board shall determine which courses, programs, curricula, and schools will be included in the Program to be funded by the Foundation.

(Source: P.A. 89-508, eff. 7-3-96.)

(205 ILCS 5/82) (from Ch. 17, par. 394)

Sec. 82. Commissioner, board; civil liability. Neither the Secretary, Director of Banking, Commissioner, any deputy commissioner, any member of the Board of Banks and Trust Companies, any member of the State Banking Board of Illinois, nor any examiner, assistant examiner or other employee of the

Division of Banking ~~Commissioner's office~~ shall be subject to any civil liability or penalty, whether for damages or otherwise, on account of or for any action taken or omitted to be taken in their respective official capacities, except when such acts or omissions to act are corrupt or malicious or unless such action is taken or omitted to be taken not in good faith and without reasonable grounds.

(Source: P.A. 85-204.)

Section 15. The Illinois Bank Holding Company Act of 1957 is amended by changing Sections 2 and 3.074 as follows:

(205 ILCS 10/2) (from Ch. 17, par. 2502)

Sec. 2. Unless the context requires otherwise:

(a) "Bank" means any national banking association or any bank, banking association or savings bank, whether organized under the laws of Illinois, another state, the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which (1) accepts deposits that the depositor has a legal right to withdraw on demand by check or other negotiable order and (2) engages in the business of making commercial loans. "Bank" does not include any organization operating under Sections 25 or 25 (a) of the Federal Reserve Act, or any organization which does not do business within the United States except as an incident to its activities outside the United States or any foreign

bank.

(b) "Bank holding company" means any company that controls or has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

(c) "Banking office" means the principal office of a bank, any branch of a bank, or any other office at which a bank accepts deposits, provided, however, that "banking office" shall not mean:

(1) unmanned automatic teller machines, point of sale terminals or other similar unmanned electronic banking facilities at which deposits may be accepted; or

(2) offices located outside the United States.

(d) "Cause to be chartered", with respect to a specified bank, means the acquisition of control of such bank prior to the time it commences to engage in the banking business.

(e) "Commissioner" means the Commissioner of Banks and Real Estate or a person authorized by the Commissioner, the Office of Banks and Real Estate Act, or this Act to act in the Commissioner's stead, except that beginning on the effective date of this amendatory Act of the 96th General Assembly, all references in this Act to the Commissioner of Banks and Real Estate are deemed, in appropriate contexts, to be references to the Secretary of Financial and Professional Regulation.

(f) "Community" means the contiguous area served by the banking offices of a bank, but need not be limited or expanded to conform to the geographic boundaries of units of local

government.

(g) "Company" means any corporation, business trust, voting trust, association, partnership, joint venture, similar organization or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, but shall not include (1) an individual or (2) any corporation the majority of the shares of which are owned by the United States or by any state or any corporation or community chest fund, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

(h) A company "controls or has control over" a bank or company if (1) it directly or indirectly owns or controls or has the power to vote, 25% or more of the voting shares of any class of voting securities of such bank or company or (2) it controls in any manner the election of a majority of the directors or trustees of such bank or company or (3) a trustee holds for the benefit of its shareholders, members or employees, 25% or more of the voting shares of such bank or company or (4) it directly or indirectly exercises a controlling influence over the management or policies of such bank or company that is a bank holding company and the Board of



Governors of the Federal Reserve System has so determined under the federal Bank Holding Company Act. In determining whether any company controls or has control over a bank or company: (i) shares owned or controlled by any subsidiary of a company shall be deemed to be indirectly owned or controlled by such company; (ii) shares held or controlled, directly or indirectly, by a trustee or trustees for the benefit of a company, the shareholders or members of a company or the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company; and (iii) shares transferred, directly or indirectly, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) to any transferee that is indebted to the transferor or that has one or more officers, directors, trustees or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the Board of Governors of the Federal Reserve System has determined, under the federal Bank Holding Company Act, that the transferor is not in fact capable of controlling the transferee. Notwithstanding the foregoing, no company shall be deemed to have control of or over a bank or bank holding company (A) by virtue of its ownership or control of shares in a fiduciary capacity arising in the ordinary course of its business; (B) by virtue of its ownership or control of shares acquired by it in connection with its underwriting of securities which are held only for

such period of time as will permit the sale thereof upon a reasonable basis; (C) by virtue of its holding any shares as collateral taken in the ordinary course of securing a debt or other obligation; (D) by virtue of its ownership or control of shares acquired in the ordinary course of collecting a debt or other obligation previously contracted in good faith, until 5 years after the date acquired; or (E) by virtue of its voting rights with respect to shares of any bank or bank holding company acquired in the course of a proxy solicitation in the case of a company formed and operated for the sole purpose of participating in a proxy solicitation.

(h-5) "Division of Banking" means the Division of Banking of the Department of Financial and Professional Regulation.

(i) "Federal Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, as now or hereafter amended.

(j) "Foreign bank" means any company organized under the laws of a foreign country which engages in the business of banking or any subsidiary or affiliate of any such company, organized under such laws. "Foreign bank" includes, without limitation, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(k) "Home state" means the home state of a foreign bank as determined pursuant to the federal International Banking Act of 1978.

(1) "Illinois bank" means a bank:

(1) that is organized under the laws of this State or of the United States; and

(2) whose main banking premises is located in Illinois.

(m) "Illinois bank holding company" means a bank holding company:

(1) whose principal place of business is Illinois; and

(2) that is not directly or indirectly controlled by another bank holding company whose principal place of business is a state other than Illinois or by a foreign bank whose Home State is a state other than Illinois.

An out of state bank holding company that acquires control of one or more Illinois banks or Illinois bank holding companies pursuant to Sections 3.061 or 3.071 shall not be deemed an Illinois bank holding company.

(n) "Main banking premises" means the location that is designated in a bank's charter as its main office and that is within the state in which the total deposits held by all of the banking offices of such bank are the largest, as shown in the most recent reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(o) "Out of state bank" means a bank:

(1) that is not an Illinois bank; and

(2) whose main banking premises is located in a state other than Illinois.

(p) "Out of state bank holding company" means a bank

holding company:

(1) that is not an Illinois bank holding company;

(2) whose principal place of business is a state other than Illinois the laws of which expressly authorize the acquisition by an Illinois bank holding company of a bank or bank holding company in that state under qualifications and conditions which are not unduly restrictive, as determined by the Secretary ~~Commissioner~~, when compared to those imposed by the laws of Illinois.

(q) "Principal place of business" means, with respect to a bank holding company, the state in which the total deposits held by all of the banking offices of all of the bank subsidiaries of such bank holding company are the largest, as shown in the most recent reports of condition or similar reports filed by the bank holding company's bank subsidiaries with state or federal regulatory authorities.

(q-5) "Secretary" means the Secretary of Financial and Professional Regulation, or a person authorized by the Secretary or by this Act to act in the Secretary's stead.

(r) "State" or "states" when used in this Act means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands.

(s) "Subsidiary", with respect to a specified bank holding company, means any bank or company controlled by such bank holding company.

(Source: P.A. 89-508, eff. 7-3-96.)

(205 ILCS 10/3.074) (from Ch. 17, par. 2510.04)

Sec. 3.074. Powers; administrative review.

(a) The Secretary ~~Commissioner~~ shall have the power and authority:

(1) to promulgate reasonable procedural rules for the purposes of administering the provisions of this Act. The Secretary ~~Commissioner~~ shall specify the form of any application, report or document that is required to be filed with the Secretary ~~Commissioner~~ pursuant to this Act;

(2) to issue orders for the purpose of administering the provisions of this Act and any rule promulgated in accordance with this Act;

(3) to appoint hearing officers to execute any of the powers granted to the Secretary ~~Commissioner~~ under this Section for the purpose of administering this Act or any rule promulgated in accordance with this Act; and

(4) to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books, papers, accounts and documents in the course of and pursuant to any investigation or hearing being conducted or any action being taken by the Secretary ~~Commissioner~~ in respect to any matter relating to the duties imposed upon or the powers vested in the Secretary ~~Commissioner~~ under the provisions

of this Act or any rule promulgated in accordance with this Act.

(b) Whenever, in the opinion of the Secretary ~~Commissioner~~, any director, officer, employee, or agent of any bank holding company or subsidiary or affiliate of that company shall have violated any law, rule, or order relating to that bank holding company or subsidiary or affiliate of that company, shall have obstructed or impeded any examination or investigation by the Secretary ~~Commissioner~~, shall have engaged in an unsafe or unsound practice in conducting the business of that bank holding company or subsidiary or affiliate of that company, or shall have violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent does not assure reasonable promise of safe and sound operation of the bank holding company, the Secretary ~~Commissioner~~ may issue an order of removal. If, in the opinion of the Secretary ~~Commissioner~~, any former director, officer, employee, or agent of a bank holding company or subsidiary or affiliate of that company, prior to the termination of his or her service with that holding company or subsidiary or affiliate of that company, violated any law, rule, or order relating to that bank holding company or subsidiary or affiliate of that company, obstructed or impeded any examination or investigation by the Secretary ~~Commissioner~~, engaged in an unsafe or unsound

practice in conducting the business of that bank holding company or subsidiary or affiliate of that company, or violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent would not have assured reasonable promise of safe and sound operation of the bank holding company, the Secretary ~~Commissioner~~ may issue an order prohibiting that person from further service with a bank holding company or subsidiary or affiliate of that company as a director, officer, employee, or agent.

An order issued pursuant to this subsection shall be served upon the director, officer, employee, or agent. A copy of the order shall be sent to each director of the bank holding company affected by registered mail. ~~The person affected by the action may request a hearing before the State Banking Board within 10 days after receipt of the order. The hearing shall be held by the State Banking Board within 30 days after the request has been received by the State Banking Board. The State Banking Board shall make a determination approving, modifying, or disapproving the order of the Commissioner as its final administrative decision. If a hearing is held by the State Banking Board, the State Banking Board shall make its determination within 60 days from the conclusion of the hearing. Any person affected by a decision of the State Banking Board under this subsection may have the decision reviewed only~~

~~under and in accordance with the Administrative Review Law and the rules adopted pursuant thereto.~~ A copy of the order shall also be served upon the bank holding company of which he is a director, officer, employee, or agent, whereupon he shall cease to be a director, officer, employee, or agent of that bank holding company.

The Secretary ~~Commissioner~~ may institute a civil action against the director, officer, employee, or agent of the bank holding company, against whom any order provided for by this subsection has been issued, to enforce compliance with or to enjoin any violation of the terms of the order.

Any person who has been the subject of an order of removal or an order of prohibition issued by the Secretary ~~Commissioner~~ under this subsection, subdivision (7) of Section 48 of the Illinois Banking Act, or Section 5-6 of the Corporate Fiduciary Act may not thereafter serve as director, officer, employee, or agent of any holding company, State bank, or branch of any out-of-state bank, of any corporate fiduciary, as defined in Section 1-5.05 of the Corporate Fiduciary Act, or of any other entity that is subject to licensure or regulation by the Division of Banking ~~Commissioner or the Office of Banks and Real Estate~~ unless the Secretary ~~Commissioner~~ has granted prior approval in writing.

(c) All final administrative decisions of the Secretary ~~Commissioner~~ under this Act shall be subject to judicial review pursuant to provisions of the Administrative Review Law. For



matters involving administrative review, venue shall be in either Sangamon County or Cook County.

(Source: P.A. 92-483, eff. 8-23-01.)

Section 20. The Corporate Fiduciary Act is amended by changing Sections 1-5.03, 5-6, and 5-8 and by adding Sections 1-5.07a and 1-5.09a as follows:

(205 ILCS 620/1-5.03) (from Ch. 17, par. 1551-5.03)

Sec. 1-5.03. "Commissioner" means the Commissioner of Banks and Real Estate or a person authorized by the Commissioner, the Office of Banks and Real Estate Act, or this Act to act in the Commissioner's stead, except that beginning on the effective date of this amendatory Act of the 96th General Assembly, all references in this Act to the Commissioner of Banks and Real Estate are deemed, in appropriate contexts, to be references to the Secretary of Financial and Professional Regulation.

(Source: P.A. 89-508, eff. 7-3-96.)

(205 ILCS 620/1-5.07a new)

Sec. 1-5.07a. Division of Banking. "Division of Banking" means the Division of Banking of the Department of Financial and Professional Regulation.

(205 ILCS 620/1-5.09a new)

Sec. 1-5.09a. Secretary. "Secretary" means the Secretary of Financial and Professional Regulation, or a person authorized by the Secretary or by this Act to act in the Secretary's stead.

(205 ILCS 620/5-6) (from Ch. 17, par. 1555-6)

Sec. 5-6. Removal orders. Whenever, in the opinion of the Secretary ~~Commissioner~~, any director, officer, employee, or agent of a corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary shall have violated any law, rule, or order relating to the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary, shall have engaged in an unsafe or unsound practice in conducting the business of the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary, or shall have violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent does not assure reasonable promise of safe and sound operation of the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary, the Secretary ~~Commissioner~~ may issue an order of removal. If in the opinion of the Secretary ~~Commissioner~~, any former director, officer, employee, or agent of a corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary, prior to the termination of his or her

service with the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary, violated any law, rule, or order relating to the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary or engaged in an unsafe or unsound practice in conducting the business of the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary or violated any law or engaged or participated in any unsafe or unsound practice in connection with any financial institution or other business entity such that the character and fitness of the director, officer, employee, or agent would not have assured reasonable promise of safe and sound operation of the corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary, the Secretary ~~Commissioner~~ may issue an order prohibiting that person from further service with a corporate fiduciary or subsidiary or corporate parent of the corporate fiduciary as a director, officer, employee, or agent. An order issued pursuant to this Section shall be served upon the director, officer, employee, or agent. A copy of the order shall be sent to each director of the corporate fiduciary affected by personal service, certified mail return receipt requested, or any other method that provides proof of service and receipt. ~~The person affected by the action may request a hearing before the State Banking Board of Illinois, hereafter "the Board", within 10 days after receipt of the order of removal or prohibition. The hearing shall be held by the Board according to the same~~

~~procedures used pursuant to Section 48 of the Illinois Banking Act, and the hearing shall be held within 30 days after the request has been received by the Board. After concluding the hearing, the Board shall make a determination approving, modifying, or disapproving the order of the Commissioner as its final administrative decision.~~ A copy of the order shall be served upon the corporate fiduciary of which the person is a director, officer, employee, or agent, whereupon the person shall cease to be a director, officer, employee, or agent of the corporate fiduciary. Any person who has been removed or prohibited by an order of the Secretary ~~Commissioner~~ under this Section or subsection (7) of Section 48 of the Illinois Banking Act may not thereafter serve as director, officer, employee, or agent of any State bank or corporate fiduciary, or of any other entity that is subject to licensure or regulation by the Division of Banking ~~Commissioner or the Office of Banks and Real Estate~~ unless the Secretary ~~Commissioner~~ has granted prior approval in writing. The Secretary ~~Commissioner~~ may institute a civil action against the director, officer, employee, or agent subject to an order issued under this Section and against the corporate fiduciary to enforce compliance with or to enjoin any violation of the terms of the order.

(Source: P.A. 92-483, eff. 8-23-01.)

(205 ILCS 620/5-8) (from Ch. 17, par. 1555-8)

Sec. 5-8. All final administrative decisions of the

~~Secretary Commissioner, or of the State Banking Board of Illinois where this Act provides a hearing before such Board to review a decision of the Commissioner,~~ shall be subject to review pursuant to the provisions of the Administrative Review Law, as now or hereafter amended, and the rules adopted pursuant thereto. For matters involving administrative review, venue shall be in either Sangamon County or Cook County.

(Source: P.A. 86-754.)

INDEX

Statutes amended in order of appearance

20 ILCS 3210/1	from Ch. 17, par. 401
20 ILCS 3210/3.01	from Ch. 17, par. 403.1
20 ILCS 3210/3.07 new	
20 ILCS 3210/4	from Ch. 17, par. 404
20 ILCS 3210/5	from Ch. 17, par. 405
20 ILCS 3210/8	from Ch. 17, par. 408
205 ILCS 5/2	from Ch. 17, par. 302
205 ILCS 5/48	from Ch. 17, par. 359
205 ILCS 5/78	from Ch. 17, par. 390
205 ILCS 5/79	from Ch. 17, par. 391
205 ILCS 5/80	from Ch. 17, par. 392
205 ILCS 5/82	from Ch. 17, par. 394
205 ILCS 10/2	from Ch. 17, par. 2502
205 ILCS 10/3.074	from Ch. 17, par. 2510.04
205 ILCS 620/1-5.03	from Ch. 17, par. 1551-5.03
205 ILCS 620/1-5.07a new	
205 ILCS 620/1-5.09a new	
205 ILCS 620/5-6	from Ch. 17, par. 1555-6
205 ILCS 620/5-8	from Ch. 17, par. 1555-8